

REMARKS

It is submitted that these claims, as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. Changes to these claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103 or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicant is entitled.

A telephone interview between Examiner Nguyen and Dennis Smid (one of the applicant's undersigned attorneys) was held on November 7, 2003. The applicant and Mr. Smid wish to thank the Examiner for his time and consideration for such interview.

Claims 1-70 are in the application.

Claims 13, 19 and 56 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 13, 19, and 56 have each been rewritten herein in independent form including all of the limitations of the respective base claim. (Note-there were no intervening claims.) Accordingly, it is believed that claims 13, 19, and 56 are allowable.

Claims 1-12, 14-18, 20-37, 41, 45-55 and 57-67 were rejected under 35 U.S.C. 102(e) as being anticipated by Takeda et al. (U.S. Patent No. 6,587,477 B1).

It is respectfully submitted that each of the independent claims as presented herein is distinguishable from Takeda as applied by the Examiner. For example, independent claim 23 recites in part the following:

"recording means **for recording** said data stream and **information indicative of said maximum bit rate on said recording medium.**" (Underlining and bold added for emphasis.)

Accordingly, in the apparatus of claim 23, information indicative of the maximum bit rate may be recorded on the recording medium. In discussing the above 102 rejection with regard to claim 23, the Examiner appears to have asserted that Takeda and, in particular, lines 1-5 of column 13 thereof, discloses the above feature of claim 23. As discussed during the November 7<sup>th</sup> conference, it is respectfully submitted that such portion of Takeda (hereinafter, merely "Takeda") does not disclose such feature. In fact, and as discussed during the November 7<sup>th</sup> conference, Takeda appears to only disclose recording so-called data 122 which does not include bandwidth information 121. In further support thereof, see Fig. 1 and lines 62-66 of column 12 of Takeda.

Therefore, since Takeda does not appear to disclose the above-identified feature of claim 23, it is respectfully submitted that claim 23 is distinguishable from Takeda. For similar or somewhat similar reasons, it is also respectfully submitted that independent claims 1, 6, 11, 17, 30, 37, 41, 45, 49, 54, 60, and 67 are distinguishable from Takeda.

Claims 2-5, 7-10, 12, 14-16, 18, 20-29, 31-36, 46-48, 50-53, 55, 57-59, and 61-66 are respectively dependent from one of the independent claims and, due to such dependency, are also believed to be distinguishable from Takeda.

Claims 38-40, 42-44 and 68-70 were rejected under 35 U.S.C. 103(a) as being unpatentable over Takeda et al. (U.S. Patent No. 6,587,477B1) in view of Itakura et al. (U.S. Patent No. 5,901,149).

Claims 38-40, 42-44 and 68-70 are respectively dependent from one of the independent claims and, due to such dependency, are also believed to be distinguishable from Takeda. The Examiner apparently does not rely on Itakura to overcome the above-described deficiencies of Takeda. Accordingly, it is believed that claims 38-40, 42-44 and 68-70 are distinguishable over the applied combination of Takeda and Itakura.

This is in response to the Examiner's statement of reasons for the indication of allowable subject matter, included in the present Office Action. To the extent the Examiner's

statement states, implies or is construed to mean that the claims 13, 19 and 56 are allowable over the prior art of record because the Examiner believes the claims should be interpreted to include one or more features or limitations not recited therein. Applicant's attorney disagrees with such an interpretation. Moreover, it is Applicant's contention that there is no particular limitation in the allowed claims that is more critical than any other. The issuance of the Examiner's statement should not be construed as a surrender by Applicant of any subject matter. It is the intent of Applicant, by his attorney, to construe the allowed claims so as to cover the invention disclosed in the instant application and all equivalents to which the claimed invention is entitled.

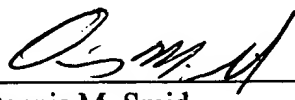
In the event that the Examiner disagrees with any of the foregoing comments concerning the disclosures in the cited prior art, it is requested that the Examiner indicate where in the reference or references, there is the bases for a contrary view.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable over the prior art, and early and favorable consideration thereof is solicited.

Please charge any additional fees incurred by reason of this response and not  
paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP

By:

  
Dennis M. Smid  
Reg. No. 34,930  
(212) 588-0800